

NOT FOR PUBLICATION

[Dkt. Ent. 5]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

INTERNATIONAL UNION OF  
PAINTERS AND ALLIED TRADES  
DISTRICT COUNCIL 711 HEALTH &  
WELFARE and VACATION FUNDS and  
FINISHING TRADES INSTITUTE and  
VINCENT M. LANE, as Trustee  
and Fiduciary for  
International Union of  
Painters and Allied Trades  
District Council 711 Health &  
Welfare and Vacation Funds and  
Finishing Trades Institute,

Plaintiffs,

v.

COBRA CONSTRUCTION,

Defendant.

Civil Action No. 13-CV-07495

(RMB/JS)

**MEMORANDUM ORDER**

BUMB, United States District Judge:

Plaintiffs International Union of Painters and Allied Trades District Council 711 Health & Welfare and Vacation Funds and Finishing Trades Institute, and Vincent M. Lane, Trustee (the "Plaintiffs") have moved for default judgment against Defendant Cobra Construction (the "Defendant") pursuant to Federal Rule of Civil Procedure 55(b)(2). For the reasons that follow, that motion is DENIED without prejudice.

On December 13, 2013, Plaintiffs commenced the above-captioned action against Defendant pursuant to Section 301 of

the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, and Section 515 of ERISA, 29 U.S.C. § 1145. Plaintiffs assert that, pursuant to the Collective Bargaining Act ("CBA") to which Defendant was a party and/or agreed to abide by, that Defendant is obligated to make certain contributions to Plaintiffs. (Compl. ¶¶ 13-15.) However, a payroll compliance audit revealed that Defendant has failed to remit the full amount of the required contributions for the period January 1, 2010 through December 31, 2012, and it has refused to submit the payments despite having notice of the delinquencies. (Id. at ¶¶ 16, 18 & Ex. A.)

Service of the Summons and Complaint were made upon Defendant on December 18, 2013. (Dkt. Ent. 3.) The time for Defendant's response expired on January 8, 2014, and Defendant has neither answered nor otherwise responded to the Complaint. On January 14, 2014, Plaintiffs requested entry of default, which the Clerk subsequently entered. (See Dkt. Ent. 4.) Plaintiffs then filed the instant motion on April 3, 2014, which was served upon Defendant by Regular and Certified Mail. (Dkt. Ent. 5.) Defendant also failed to respond to the motion.

"Before granting a default judgment, the Court must determine (1) whether there is sufficient proof of service, (2) whether a sufficient cause of action was stated, and

(3) whether default judgment is proper." Teamsters Health & Welfare Fund of Phila. & Vicinity v. Dubin Paper Co., No. 11-7137, 2012 WL 3018062, at \*2 (D.N.J. July 24, 2012) (citations omitted). Whether default judgment is proper depends on (1) whether a plaintiff will be prejudiced if default is not granted, (2) whether a defendant has a meritorious defense, and (3) whether the defendant's delay is the result of culpable misconduct. See N.J. Bldg. Laborers' Statewide Pension Fund and Trustees Thereof v. Pulaski Construction, No. 13-519, 2014 WL 793563, at \*3-4 (D.N.J. Feb. 26, 2014) (citing Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000)). As noted above, the docket reflects that the summons and complaint were served personally upon the managing agent of Defendant. When Defendant failed to respond to the Complaint, Plaintiffs properly sought entry of default pursuant to Federal Rule of Civil Procedure 55(a).

"Under ERISA, an employer who is obligated to contribute to a plan under the terms of a collective bargaining agreement must make such contributions in accordance with the terms and conditions of that agreement." Laborers Int'l Union of N. Am. Local No. 199 Welfare, Pension, Apprenticeship & Training Annuity v. RAMCO Solutions, No. 11-4976, 2013 U.S. Dist. LEXIS 120769, at \*9-10 (D.N.J. Aug. 26, 2013) ("LIUNA") (citing ERISA Section 515, 29 U.S.C. § 1145). Section 502(a) permits a plan

fiduciary to sue an employer for failure to make the required contributions. 29 U.S.C. § 1132(a). If a court enters judgment in favor of the plan fiduciary, ERISA section 502(g)(2) requires the court to award (1) unpaid contributions; (2) interest on the unpaid contributions; (3) liquidated damages; (4) reasonable attorneys' fees and costs; and (5) other relief the court deems appropriate. Operative Plasterers & Cement Masons Int'l Ass'n Local No. 8 v. Specialty Stucco Restoration, No. 05-5879, 2006 U.S. Dist. LEXIS 92460, at \*6 (D.N.J. Dec. 20, 2006) (citing 29 U.S.C. § 1132(g)(2)); see also LIUNA, 2013 U.S. Dist. LEXIS 120769, at \*10.

According to the Complaint, Defendant was a party to and/or agreed to abide by the terms of a CBA obligating it to remit fringe benefit contributions to Plaintiffs in a timely manner on behalf of eligible employees.<sup>1</sup> (Compl. ¶¶ 13-15.) In connection with its motion for default judgment, Plaintiffs attached the CBA entered into by Plaintiffs and the Garden State Council, Inc., signed on August 29, 2006 and effective for the period May 1, 2006 through March 31, 2011.<sup>2</sup> (Ex. A, Dkt. Ent. 5-2.) Notably,

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<sup>1</sup> "A consequence of the entry of a default judgment is that 'the factual allegations of the complaint . . . will be taken as true.'" Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990) (citation omitted).

<sup>2</sup> Plaintiffs aver that this CBA is entered into between Plaintiffs and the New Jersey Glass and Metal Contractors Associations, to which Defendant is a "signatory employer." (Affidavit, Dkt. Ent. 5-1, at ¶ 2.) However, Plaintiffs failed

the CBA by its terms does not cover the full period for which Plaintiffs seek damages. Plaintiffs also submitted a signature page signed on behalf of Defendant and dated December 7, 2000. (Id.) This signature page provides "THE PARTIES HERETO ARE DESIROUS OF ENTERING INTO AN AGREEMENT TO SET FORTH CONTROL AND REGULATE THE WAGES, HOURS, FRINGE BENEFITS, TERMS AND CONDITIONS OF EMPLOYMENT UNDER WHICH THE EMPLOYER WILL EMPLOY PAINTERS AND ALLIED TRADE WORKERS." (Id.) The significance of this signature page is unclear to this Court as it appears to predate (by six years) the CBA and also seemingly indicates only that the parties intend to enter a separate agreement.

Moreover, while Defendant's default constitutes an admission of the allegations in the Complaint, "[a] default is not an admission of the amount of damages claimed." Specialty Stucco Restoration, 2006 U.S. Dist. LEXIS 92460, at \*6, 7 (citation omitted). Here, Plaintiff alleges that a payroll compliance audit performed by Novak Francella, LLC revealed that Defendant has failed to remit and/or has only remitted a portion of the required contributions for the period January 1, 2010 through December 31, 2012. (Id. at ¶ 16.) Plaintiffs submitted the compliance reports reflecting outstanding contributions in the amount of \$2,153.52. (Ex. D, Dkt. Ent. 5-3.) The accuracy of

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to explain or document adequately the connections among these entities.

these amounts depends on the contributions Defendant agreed to make under the applicable CBA. However, because Plaintiffs failed to submit the CBAs covering the full period for which they seek damages, or sufficient evidence demonstrating that Defendant agreed to abide by the terms of the CBAs, this Court cannot adequately evaluate the amount of damages that may be owed. Therefore, entry of the default judgment is inappropriate at this time. See Operative Plasterers, 2006 U.S. Dist. LEXIS 92460, at \*7 ("While the factors may weigh in favor of entering default judgment with regard to liability, the entry of the default judgment with regard to the amount of damages requested by Plaintiffs is inappropriate at this time because Plaintiffs have not provided this Court with sufficient evidence to support the amounts requested.").

ACCORDINGLY, FOR THESE REASONS, IT IS on this, the 21st day of November 2014, hereby

**ORDERED** that Plaintiffs' motion for default judgment is DENIED without prejudice; and it is further

**ORDERED** that Plaintiffs shall have thirty (30) days in which to file supplemental documentation supporting its request for default judgment.

s/Renée Marie Bumb  
RENÉE MARIE BUMB  
UNITED STATES DISTRICT JUDGE